

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

December 20, 2006

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2006 DEC 20 PM 3:51  
CHIEF CLERKS OFFICE

Derek Seal, General Counsel  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin Texas 78711-3087

Re: ***SOAH Docket No. 582-06-1502; TCEQ Docket No. 2006-0195-AIR; Application of Oak Grove Management Company LLC for Proposed Air Permit No. 76474 and PSD-TX-1056***

Dear Mr. Seal:

The Commission will consider this case at the open meeting on January 10, 2007. We have reviewed the exceptions filed by all parties. For the most part, the exceptions simply repeat the arguments made at the hearing. We do, however, wish to respond to three contentions argued by Oak Grove in its exceptions:

- Oak Grove states that it "takes exception to the ALJs' assertion that, to satisfy the technical practicability prong of the two-part BACT analysis, a proposed technology must have been previously operated on a commercial scale mirroring the commercial application proposed by the applicant. This erroneous interpretation of BACT is the sole basis for the ALJs' ultimate conclusion that the NOx and mercury emission controls proposed for the OSES are not technically feasible." Oak Grove's exception is incorrect and mischaracterizes the Proposal for Decision (PFD). Rather, the PFD made clear that technical practicability can be demonstrated by a previous operation or by technical analysis. The PFD correctly points out that there is no commercial unit in the nation that uses the control technology proposed by Oak Grove with lignite. But the PFD also discusses in great detail the technical analysis of Oak Grove's proposed emission controls and concludes that Oak Grove failed to establish by a preponderance of the evidence that its emission controls will operate as proposed. (PFD at 14-24; 30-36). Thus, the PFD carefully examined the technical analysis of the proposed emission controls for NOx and mercury, and Oak Grove's argument that lack of a commercial demonstration of the technology is the sole basis of the PFD is incorrect.
- Concerning NOx controls, Oak Grove's exceptions refer to vendor guarantees of 0.05 lb/MMBtu for NOx emission levels to suggest that a 0.08 lb/MMBtu limit is feasible. This is opposite from the position taken by Oak Grove at the hearing. When Protestants

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suggested that such vendor guarantees supported a lower NOx emission limit, Oak Grove argued that vendor guarantees should not be used to set emission limits because the guarantees had too many conditions and limitations. Specifically, Oak Grove's expert witness, Mr. Cichanowicz, testified that it would not be appropriate to set emission limits based on vendor guarantees, and that "[r]ealistically, performance guarantees for environmental control equipment have little meaning in the power industry." (Oak Grove Ex. 35, at 37; *see also* Tr. at 358). The ALJs agreed with Oak Grove's evidence at hearing that performance guarantees have too many limitations and conditions (such as ash blockage must be kept at less than 5%) to rely on them to determine actual emissions or to set emission standards in a commercial setting.

- Concerning mercury controls, Oak Grove's exceptions complain that the ALJs failed to account for additional mercury removal that will be achieved by selective catalytic reduction (SCR) and wet flue gas desulfurization (FGD). However, the ED's Permit Engineer, Mr. Hamilton, questioned whether the activated carbon injection (ACI) control system would receive a co-benefit from the SCR. He testified that no such data exist for Texas lignite. (Tr. v. 4 at 707-708). Likewise, Mr. Cichanowicz acknowledged that "the supporting data is sparse and suggests highly variable behavior; thus the actual result is uncertain." (Oak Grove Ex. 35 at 27). Indeed, because of this uncertainty with Texas lignite, which has high elemental mercury that is very difficult to remove and low levels of chlorides that are necessary for oxidation, Oak Grove's application assumed no mercury removal contribution from SCR or FGD, and it relied only on ACI and the fabric filter to control mercury. (Tr. v. 3 at 497-498). The ALJs conclusion in the PFD is the same as Oak Grove's position in its application.

In conclusion, the ALJs do not believe the exceptions presented by the parties have merit; consequently we recommend that the Commission overrule all exceptions.

Thank you for your consideration of this matter.

Sincerely,



Thomas H. Walston  
Administrative Law Judge



Carol Wood  
Administrative Law Judge

/nl  
cc:

Attached Service List

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**STYLE/CASE:** OAK GROVE MANAGEMENT CO LLC

**SOAH DOCKET NUMBER:** 582-06-1502

**REFERRING AGENCY CASE:** 2006-0195-AIR

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**

**ALJ THOMAS H. WALSTON**

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xc: Docket Clerk, State Office of Administrative Hearings